

Docket Item # 4  
BZA CASE #2005-00037

Board of Zoning Appeals  
July 14, 2005

**ADDRESS:** 201 EAST WINDSOR AVENUE  
**ZONE:** CL, COMMERCIAL LOW  
**APPLICANT:** PETER AND JENNIFER HEIMBERG, OWNERS

**ISSUE:** Variance to (1) construct an 8.00 feet closed wood fence on the rear south property line and (2) build a 6.00 feet closed wood fence facing Mount Vernon Avenue forward of the rear building wall.

CODE SECTION	SUBJECT	CODE REQMT	APPLICANT PROPOSES	REQUESTED VARIANCE
7-202 (A)(1)	Privacy Fence (Rear Property Line)	6.00 ft	8.00 ft	2.00 ft
	Corner Lot Fence	6.00 ft At Rear Blding Wall	6.00 ft Forward of Rear Building Wall	

The staff **recommends approval** of the request to build a 6.00 feet fence facing Mount Vernon Avenue conditioned that the existing hedge remain and be maintained in front of the proposed fence or a planting screen of comparable height be installed and maintained in front of the proposed fence.

The staff **recommends denial** of the request to build a section of 8.00 feet tall closed fence along the south side property line. The applicants have not demonstrated a hardship. A six foot fence can be built by right at this location.

If the Board decides to grant a variance, it should contain the above conditions and conditions under the department comments. The variance must also be recorded with the deed of the property in the City's Land Records Office.

(insert sketch here)

**I. Issue**

The applicants, located at 201 East Windsor Avenue a corner lot, request a variance to (1) build a 8.00 feet closed fence located on the rear property line and (2) allow a 6.00 feet tall fence in the secondary front yard facing Mount Vernon Avenue forward of the rear building wall.

According to the applicants, the 6.00 feet and 8.00 feet wood fence are necessary to provide privacy facing Mount Vernon Avenue and screen an adjoining commercial lot.

**11. Background**

The subject property, a corner lot, is three lots of record with 75.00 feet of frontage on East Windsor Avenue and 108.00 feet of frontage on Mount Vernon Avenue and contains 8,100 square feet of property area. The subject property is zoned CL, commercial low and used as a residential dwelling.

The existing two-story single-family dwelling with a covered front porch is located 13.50 feet from the front property line facing East Windsor Avenue, 7.50 feet from the front property line facing Mount Vernon Avenue, 50.00 feet from the south rear property line and 50.00 feet from the west side property line.



*Figure 1- Existing hedge facing Mount Vernon Avenue*

**III. Discussion**

As indicated on the submitted survey plat and represented in the submitted photographs, the property is partially enclosed with a tall 12.00 feet high hedge and a 5.00 feet metal mesh fence directly behind the hedge that screens the entire building facade length facing Mount Vernon Avenue. The applicants plan to remove the hedge.



*Figure 2-View of backyard from Mount Vernon Avenue*

*Figure 3- Proposed location of 8.00' fence (indicated with black line)*

[illegible]

There have been no variances previously granted for the subject property.

Figure 4- Proposed locations of 6' and 8' fences



**IV. Master Plan/Zoning**

The subject property is zoned CL, commercial low and has been so zoned since adoption of the zoning ordinance in 1992, and is identified in the Potomac West Small Area Plan for commercial low land use. The property is used as residential dwelling that is a permitted use in the CL zone.

**V. Requested variances****Section 7-202(B)(3), Fences in Required Yards:**

Fences 6.00 feet in height are allowed in required side and rear yards fences and can be either open or closed. The proposed new fence along the south rear property line is a wood board on board fence and is 8.00 feet high. The applicants request a variance of 2.00 feet from the fence height requirement as it applies to the wood fence located in the required south rear yard.

**Section 7-1702(B), Corner Lot Fence**

The zoning ordinance states that on a corner lot a 6.00 feet tall closed fence is allowed in the secondary required front yard, no closer than 3.00 feet from a side walk and the fence must align with the rear building wall. The applicants request a variance to erect a 6.00 feet tall closed fence facing Mount Vernon Avenue forward of the rear building wall to the front building wall facing East Windsor Avenue. The new fence will be approximately 25.00 feet from the front property line facing East Windsor Avenue and 1.00 feet from the front property line facing Mount Vernon Avenue in compliance with the zoning regulations.

**VI. Noncomplying structure**

The existing building at 201 East Windsor Avenue is a noncomplying structure with respect to the following:

	<u>Required</u>	<u>Provided</u>	<u>Noncompliance</u>
Front Yard (East Windsor)	20.00 ft	14.00 ft	6.00 ft
(Mt. Vernon)	20.00 ft	7.50 ft	12.50 ft

**VII. Staff analysis under criteria of section 11-1103**

To grant a variance, the Board of Zoning Appeals must determine that a unique characteristic exists for the property. Section 11-103 of the zoning ordinance lists standards that an applicant must address and that the Board believes exists and thus warrants varying the zoning regulations.

- (1) The particular physical surroundings, shape, topographical condition or extraordinary situation or condition of the property that prohibits or unreasonably restricts the use of the property.
- (2) The property's condition is not applicable to other property within the same zoning classification.
- (3) Hardship produced by the zoning ordinance was not created by the property owner.
- (4) The granting of a variance will not be detrimental to the public or other property or the neighborhood in which the subject property is located. Nor will the granting of a variance diminish or impair the value of adjoining properties or the neighborhood.
- (5) The granting of the variance will not impair light and air to the adjacent property.
- (6) The granting of a variance will not alter the character of the area nor be detrimental to the adjacent property.
- (7) Strict application of the zoning ordinance will produce a hardship.
- (8) Such hardship is generally not shared by other properties in the same zone and vicinity.
- (9) No other remedy or relief exists to allow for the proposed improvement.
- (10) The property owner has explored all options to build without the need of a variance.

**VIII. Applicant's Justification for Hardship**

The applicants state the proposed fences will provide privacy and security to their home that is located 7.50 feet from the public sidewalk facing Mount Vernon Avenue. Several first floor windows are exposed permitting public view directly into the kitchen and front hallway. In addition, the proposed fence along the south rear property line is to block a metal storage container placed on the adjoining commercial lot at 2104 Mount Vernon Avenue.

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**IX. Staff Analysis**

The subject property, a corner lot, is occupied by a significant historic residential structure in the Town of Potomac that is also commercially zoned and surrounded by commercial uses. The applicants purchased the property in 2000 and were aware of the placement of the building facing Mount Vernon Avenue and the commercial lot directly to the south. Along the Mount Vernon Avenue frontage, the portion of the lot where the house is placed a tall hedge screens the side of the house facing Mount Vernon Avenue.

In May 2005, following a year-long planning study, City Council adopted the *Mt. Vernon Avenue Business Area Plan* to define a future vision for Mt. Vernon Avenue, guiding neighborhood change, while protecting the adjoining residential neighborhoods. Specific strategies for three focus areas along Mt. Vernon Avenue are included in the *Plan*. The Historic Core area is comprised of the properties fronting Mt. Vernon Avenue between Uhler and Bellefonte Avenues, and includes the Town of Potomac National Register Historic District.

The subject property abuts the Historic Core and is developed with a structure that has been deemed a contributing structure within the Town of Potomac Historic District.

The requested variance to construct a 6 feet high solid fence immediately adjacent to the public sidewalk along Mt. Vernon Avenue does not further the *Plan* goals of enhancing the pedestrian-friendliness and vibrancy of Mt. Vernon Avenue. A solid fence of the proposed height and location will create a significant visual barrier along the entire property's Mt. Vernon Avenue frontage that is detrimental to the streetscape and incompatible with the historic character of the Town of Potomac Historic District.

As proposed a tall closed fence without a hedge, placed along the majority of the lot's Mount Vernon frontage will radically change the use of the public sidewalk and the appearance along the street scape. The current fence rules are intended to maintain openness in front yards and prevent tall imposing fences along the street.

**X. Recommendations**

Ideally a 6.00 feet closed fence is not the preferred solution on this property. However, staff believes that a balance must be struck between residential and commercial uses with competing needs particularly when in close proximity to each another. In this case, a significant historic residential building is surrounded by commercial uses and is situated along a busy pedestrian and vehicular right-of-way. Given these conditions the applicants do have a basis for hardship to justify a portion of the variance.

First, the applicants are permitted to build without a variance the section of 6.00 feet tall fence facing Mount Vernon Avenue starting at the rear of the building to the south property line.

Second, staff recommends approval of the variance to install the section of 6.00 feet tall fence forward of the front building wall and facing Mount Vernon Avenue with the condition that the existing hedge remain and be maintained to screen the new fence facing the public sidewalk. Alternatively, if the applicants desire to remove the existing hedge a similar planting of comparable height must be installed to screen the new fence facing the public domain.

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Third, the section of 8.00 feet tall fence along south property line is unnecessary and will present an opposing appearance from the public right-of-way. Once the adjoining commercial lot is cleaned up, a 6.00 feet fence will be sufficient to screen the commercial lot.

Staff is actively working on an enforcement case to have the storage container and materials placed outside removed from the commercial lot under the maintenance code so the applicants will not continue to view the site in its present state. The zoning regulations does not allow a storage container to be placed on commercial property other than for temporary construction purposes. The zoning ordinance also prohibits outdoor storage. There is no hardship for this section of fence facing the abutting commercial lot.

For the above reasons staff **recommends approval with conditions** of the portion of the variance to install a fence forward of the rear building wall facing Mount Vernon Avenue.

Staff **recommends denial** of the variance to increase the height of the fence facing the south rear property line.

STAFF:        Hal Phipps, Chief, Planning and Zoning  
                 Peter Leiberg, Zoning Manager

**DEPARTMENTAL COMMENTS**

Legend: C - code requirement R - recommendation S - suggestion F - finding

\* The applicant is advised that if the variance is approved the following additional comments apply.

Transportation and Environmental Services:

F-1 No comment.

Code Enforcement:

C-1 A construction permit is required for the proposed project.

Recreation (Arborist):

F-1 No trees are affected by this plan.

Historic Alexandria (Archaeology):

F-1 There is low potential for this project to disturb significant archaeological resources. No archaeological action is required.